

IN THE SUPREME COURT OF THE STATE OF DELAWARE

IN THE MATTER OF A MEMBER §
OF THE BAR OF THE SUPREME § No. 391, 2005
COURT OF THE STATE OF §
DELAWARE: § Board Case No. 25, 2004 and
§ 7, 2005
ANDRE M. BEAUREGARD, ESQ., §
§
Respondent. §

Submitted: September 20, 2005
Decided: October 24, 2005

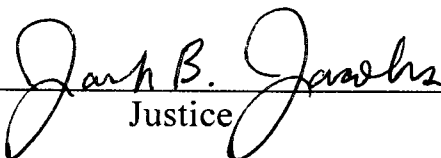
Before **BERGER, JACOBS**, and **RIDGELY**, Justices.

ORDER

This 24th day of October 2005, it appears to the Court that the Board on Professional Responsibility has filed its Report in this matter pursuant to Rule 9(d) of the Delaware Lawyers' Rules of Disciplinary Procedure. Neither the Respondent nor the Office of Disciplinary Counsel has filed objections to the Board's Report. The Court has reviewed the matter pursuant to Rule 9(e) and concludes that the Board's Report should be approved.

NOW, THEREFORE, IT IS ORDERED that the Report of the Board on Professional Responsibility filed on August 24, 2005 (copy attached) is hereby APPROVED. The matter is hereby CLOSED.

BY THE COURT:


Justice

cc: Court

1

BOARD ON PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF THE STATE OF DELAWARE

In the Matter of a Member
of the Bar of the State of Delaware

ANDRE M BEAUREGARD,
Respondent.

CONFIDENTIAL

Board Case No. 25, 2004,
No. 7, 2005

No. 391, 2005

2005 AUG 22 PM 4:27

REPORT OF THE BOARD ON PROFESSIONAL RESPONSIBILITY

The Panel of the Board on Professional Responsibility appointed to hear this matter consisted of Elizabeth M. McGeever, Esquire, James H. Geer, and David J. Ferry, Jr., Esquire, Chair. A hearing was held in the Supreme Court Courtroom in Wilmington, Delaware, on Friday, June 3, 2005. The Office of Disciplinary Counsel ("ODC") was represented by Patricia Bartley Schwartz, Esquire and Mary Susan Much, Esquire, and Respondent, Andre M. Beauregard, Esquire, was represented by William Swain Lee, Esquire. A Prehearing Stipulation and Joint Recommendation of Sanction was filed with the Board on that date. Part I of the Stipulation contained 27 admitted facts and violations. Part II of the Stipulation contained a statement of three aggravating factors and five mitigating factors. Part III of the Stipulation contained a joint recommendation of sanction with conditions.

BACKGROUND

A petition for discipline was filed against the respondent by the ODC on March 2, 2005. The

petition for discipline was approved by a Panel of the Preliminary Review Committee. The petition alleged a total of eight violations of the Delaware Lawyers' Rules of Professional Conduct ("the Rules") as follows:

- COUNT ONE: FAILURE OF MANAGING PARTNER TO ENSURE COMPLIANCE WITH RULES**
- COUNT TWO: FAILURE TO SAFEGUARD CLIENT PROPERTY**
- COUNT THREE: FAILURE TO PROMPTLY DISBURSE FUNDS**
- COUNT FOUR: FAILURE TO MAINTAIN BOOKS AND RECORDS**
- COUNT FIVE: FAILURE OF MANAGING PARTNER TO ENSURE COMPLIANCE WITH RULES**
- COUNT SIX: FAILURE TO SUPERVISE NON-LAWYER EMPLOYEES**
- COUNT SEVEN: ENGAGING IN CONDUCT INVOLVING DISHONESTY, FRAUD, DECEIT OR MISREPRESENTATION**
- COUNT EIGHT: ENGAGING IN CONDUCT PREJUDICIAL TO THE ADMINISTRATION OF JUSTICE**

I. ADMITTED FACTS

1. Beauregard is a member of the Bar of the Supreme Court of Delaware. He was admitted to the Bar in 1986. At all times relevant to this Petition, Beauregard was a partner in the firm of Brown, Shiels, Beauregard & Chasanov ("the Firm"), which has offices in Dover, Georgetown, and Rehoboth Beach, Delaware.

2. Delaware lawyers are obliged to file an annual registration statement with the Court, which includes a Certificate of Compliance, by which a lawyer, or managing partner on behalf of the firm, certifies

to the Court that the firm is properly maintaining books and records in compliance with the specific requirements of the Rules. The Court expects that lawyers completing the Certificate of Compliance will undertake the appropriate review and inquiry into matters involving their law practice books and records and their tax obligations, so as to enable them accurately to answer all of the items identified on the Certificate.

3. Beauregard was managing partner of the Firm in 2000 and 2004, and is so designated on the Certificates of Compliance filed by the Firm in those years. Beauregard was, however, the attorney responsible for the books and records in the Georgetown office at all times relevant to this Petition.

BOARD CASE NO. 7, 2005

4. Based on a complaint received by the ODC in 2000, it was agreed with the ODC that the Firm would institute a firm-wide integrated conflicts system that would include all three offices.

5. The Firm failed to implement such a system.

6. This failure was indicative of the Firm's inability to manage the three offices as a unified Firm.

BOARD CASE NO. 25, 2004

7. In December 2003, the Firm reported to ODC that Christy Kaiser, an employee, had embezzled approximately \$140,000 from the Dover office's real estate escrow account ("Dover account"). Although the Firm claims it is one Firm with three offices, the ODC's investigation revealed that the Georgetown office and the Dover office maintain separate real estate escrow accounts.

8. On January 22, 2004 at the request of the ODC, Joseph McCullough, the auditor for the Lawyers' Fund for Client Protection ("LFCP"), conducted an audit of the Firm's Georgetown office financial books and records. Mr. McCullough conducted various follow-up audits, which culminated in the issuance of his written report on November 15, 2004.

9. According to Mr. McCullough's audit the Georgetown real estate escrow account ("Georgetown account") which was opened in the Fall of 2000 had never been properly maintained in accordance with the Rules. Specifically, Mr. McCullough reported that for the applicable period Beauregard (1) failed to maintain a client subsidiary ledger for the Georgetown account; (2) failed to reconcile the total of client balances to the reconciled balance; and (3) for the period October 2000 through January 31, 2002, had 136 outstanding checks, totaling \$322,812.79 for the Georgetown account.

10. Due to Beauregard's failure to reconcile the Georgetown account or keep client lists, Mr. McCullough was unable to determine whether any negative client balances existed; whether Beauregard had any unidentified funds in the Georgetown account; or whether earned fees were transferred to the operating account on a timely basis.

11. The employee originally responsible for the Georgetown account had resigned from the Firm in March 2002. The Firm became aware of deficiencies in the Georgetown account in the summer of 2002 when an employee, Ms. Carole Milton, who had retired from the Dover office and was hired to do the Georgetown real estate reconciliations, advised them of deficiencies.

12. Ms. Milton recreated the transactions and created a client subsidiary ledger for the Georgetown account through late 2002. The client information was downloaded to Dover and checks began to issue to those clients/third parties to whom they were owed. During this process it became apparent that Ms. Milton had not properly recorded the data for each real estate transaction and the deficiencies remained unresolved.

13. On or about October 2003, Beauregard contracted with Thomas Sombar, CPA, to assist with the reconciliation of the Georgetown account. Mr. Sombar advised Beauregard that it would not be "economically feasible" for his accounting firm to reconcile the Georgetown account bank balance with the

clients' subledger due to his lack of confidence in the dollar amounts provided by Beauregard's office staff. Mr. Sombar noted numerous negative balances and client listings with balances dating back to early 2001. Mr. Sombar determined that deposits into the Georgetown account had not been recorded as they were made and he concluded that the account would need to be recreated—every transaction would need to be reviewed, all checks pertaining to that transaction would need to be logged and checked for accounting accuracy. Lastly, he suggested that Beauregard open a new real estate escrow account for the Georgetown office and begin processing all real estate matters through the new account.

14. At the time of the follow-up audit on October 20, 2004, Mr. McCullough determined that 166 checks remained outstanding, totaling \$48,834.51 in undisbursed funds from the old real estate escrow account. There was a wire deposit, \$75,135.30, listed as outstanding since October 2003, which was determined to belong to the Dover account. The books revealed unidentified transfers of funds, which involved the Dover office.

15. Mr. McCullough concluded that the “lack of communication between offices [Dover and Georgetown] contributed to the problem.”

COUNT TWO: BEAUREGARD FAILED TO SAFEGUARD CLIENT PROPERTY

16. Rule 1.15(a) states, in part, that a lawyer shall maintain “complete records of [escrow] account funds...for a period of five years after the completion of the events that they record”.

17. By failing to maintain client listings and a client subsidiary ledger, for the Georgetown account, October 2000 through January 2004, such that he would be able to determine to whom and what amounts were owed, Beauregard admits he violated Rule 1.15(a).

COUNT THREE: BEAUREGARD FAILED TO PROMPTLY DISBURSE FUNDS

18. Rule 1.15(b) states, in part, “a lawyer shall promptly deliver to the client or a

third person any funds...that the client or third person is entitled to receive.”

19. By failing to promptly disburse \$322,812.79, consisting of 136 checks, from the Georgetown account for the period October 2000 through January 31, 2002, Beauregard admits he violated **Rule 1.15(b)**.

COUNT FOUR: BEAUREGARD FAILED TO MAINTAIN BOOKS AND RECORDS

20. **Rule 1.15(d)** sets forth detailed and specific requirements for the maintenance of attorneys' books and records and handling of practice-related funds, including requirements applicable to “all fiduciary and real estate escrow accounts.” Specifically this Rule requires that (a) no funds disbursed for a client or third party from a lawyer's fiduciary account be in excess of funds received from that client or third party, and that if through error funds disbursed for a client or third party exceed funds received from that client or third party, the lawyer shall transfer funds from the non-fiduciary account in a timely manner to cover the excess disbursement [i.e., promptly correct client negative balances]; and (b) no funds which should have been disbursed shall remain in the fiduciary account (outstanding checks).

21. By failing to maintain client listings and a client subsidiary ledger for the Georgetown account for a three-year period from Fall 2000 through January 2004; and by failing to promptly disburse funds from the Georgetown account, Beauregard admits he violated **Rule 1.15(d)**.

COUNT SIX: BEAUREGARD FAILED TO SUPERVISE NON-LAWYER EMPLOYEES

22. **Rule 5.3** states that in employing non-lawyer assistants, “a partner in a law firm shall make reasonable efforts to ensure that the firm has...measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; a lawyer having direct supervisory authority over a non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and a lawyer shall be responsible for conduct of such a

II. AGGRAVATING AND MITIGATING FACTORS¹

Aggravating Factors

The ODC and Beaugard stipulate that the following aggravating factors exist in this disciplinary matter:

(1) Beaugard engaged in a pattern of misconduct. He failed to maintain his law office books and records in accordance with the Rules from October 2000 through January 2004.

He failed to supervise his employee bookkeeper from October 2000 through January 2004. And he failed to accurately represent the status of his books and records on his Certificates of Compliance filed with the Court for the years 2001, 2002, and 2003. [Standard § 9.22(c)];

(2) Beaugard engaged in multiple offenses -- 6 Rules violations. [Standard § 9.22(d)]; and

(3) Beaugard has substantial experience in the practice of law. [Standard § 9.22(i)].

Mitigating Factors

ODC and Beaugard stipulate that the following mitigating factors apply in this disciplinary matter:

(1) Beaugard has no prior disciplinary record [Standard § 9.32(a)];

(2) Beaugard has made efforts to rectify the consequences of his misconduct including: (a) instituting remedial measures to correct the deficiencies in the Georgetown office's books and records including the retention of an independent CPA and obtaining additional computer software and consulting

¹The aggravating and mitigating factors addressed in this Stipulation are derived from the ABA Standards for Imposing Lawyer Sanctions §§ 9.2 and 9.3 (1991) (as amended Feb. 1992) (the "Standards").

with Richard Herrmann, Esquire with regard to the implementation of computerized conflicts screening; and (b) agreeing to dissolve the Firm. [Standard § 9.32(d)];

(3) Beauregard is cooperating with ODC and in this proceeding before the Board. [Standard § 9.32(e)];

(4) During the period in question, Respondent Beauregard experienced the death of his mother and his father-in-law, a disabling stroke to his father, and the dissolution of his marriage [Standard Sections 9.32(c)]; and

(5) During this period, Respondent Beauregard was disabled and then recuperating from shoulder surgery, which was followed by the onset of symptoms eventually diagnosed as Multiple Sclerosis. [Standard Sections 9.32(h)]

The Panel hereby incorporates the aggravating and mitigating factors set forth in Part II of the Stipulation in their entirety.

STATEMENT OF FACTS

Mr. Beauregard testified that he began employment with the Brown, Shiels firm in June or July of 1990, became a junior partner in 1994, and became the partner in charge of the Rehoboth Beach office in 1995. His areas of practice include criminal defense, personal injury, and civil matters. His primary area is criminal defense. He indicated that he works from the Rehoboth office and makes very minimal use of the Georgetown and Dover offices.

Mr. Beauregard indicated that in the late 1990's the firm was running in the red and he was made managing partner to put the firm in the black. He decided to cut costs and improve profits. He now realizes that he needed greater supervision of the staff in the firm.

Mr. Beauregard's future plans have not yet been made. He would like to continue practicing in Rehoboth Beach. He has made some calls to other attorneys, but has no definite plans as of yet.

Mr. Beauregard indicated that there is a full-time staff at the Rehoboth office and all of his files are kept there. There is a conflicts system in place. The bookkeeping is now run from the Georgetown office. He understands the conditions of the Stipulation and Joint Recommendation of Sanctions.

Mr. Beauregard testified as to some mitigating factors. He has had severe health problems including a diagnosis of multiple sclerosis. He has had treatment at Johns Hopkins, receiving three injections per week as well as chemotherapy. Every six months he has a spinal tap or an MRI. He continues to go to the office on a daily basis and participates in a physical regimen to address the conditions of his disease. He indicated that the past five years have been devastating to him for several reasons including the death of his mentor, Dean Betts.

On cross-examination, the Respondent acknowledged that the real estate account was the only account in Sussex County where the auditor noted significant deficiencies. That account is inactive. The Georgetown staff has put a considerable amount of time and effort into the painstaking research of each and every settlement file which is estimated to be approximately 1,000 files. There still remains a balance in the inactive account and the staff remains committed to working on identifying the clients and, if the clients cannot be identified, the amounts will be escheated to the state. The remaining balance in that account is

approximately \$13,600.00. Mr. Beauregard confirmed that he still intends to practice law but he knows from experience that he should not continue to do so if his physical problems make it impossible for him to do so.

VIOLATIONS

The Panel finds that the Respondent violated Rule 1.15(a), Rule 1.15(b), Rule 1.15(d), Rule 5.3, Rule 8.4(c), and Rule 8.4(d). The Panel accepts the stipulated violations set forth in the Stipulation.

RECOMMENDATIONS

Upon consideration of the evidence presented, the stipulation of the parties, and the aggravating and mitigating factors set forth in the stipulation, the Panel accepts the recommendations of counsel and recommends that the respondent be publicly reprimanded for his violation of the aforesaid rules, subject to the following terms:

Practice limitations

(1) Pursuant to Rule 8(a)(9) of the Delaware Lawyers' Rules of Disciplinary Procedure, Beauregard shall have a limitation on the nature and/or extent of his practice. He will dissolve the Firm and the partnership currently known as Brown, Shiels, Chasanov & Beauregard as soon as practicable but no later than December 31, 2005.

(2) If Beauregard is a named partner and/or a principal in a firm that has more than one office, Beauregard must ensure that the conflict system in the firm is centralized in the main office and each office must be networked by computer with the main office in order to perform conflict checks. Within thirty days of such an occurrence, Beauregard shall file with the ODC a report by Richard Herrmann, Esquire, or an

otherwise qualified individual, regarding the status of his new firm's conflicts screening mechanism, including a description of that system and whether or not it is, in fact, compliant with the above requirement.

(3) If Beauregard is a named partner and/or a principal in a firm that has more than one office, Beauregard must ensure that the books and records and bank accounts encompassed by Rule 1.15 and Rule 1.15A are maintained in the main office.

Conditions

(1) By no later than December 31, 2005, Beauregard shall close the inactive Wilmington Trust real estate account—all funds shall have been identified, disbursed, or transferred to a separate account awaiting escheat to the State of Delaware.

(2) During the first year following the imposition of the public reprimand, on a quarterly basis (every three months), Beauregard shall have caused to be filed with the ODC an affidavit by a licensed certified public accountant that all of his new firm's law practice books, records and bank accounts have been maintained during the preceding quarter in full compliance with Rule 1.15. This condition shall be effective as long as Beauregard is a principal and/or named partner in a firm.

(3) During the second year following the imposition of the public reprimand, on a semi-annual basis (every six months), Beauregard shall have caused to be filed with the ODC an affidavit by a licensed certified public accountant that all of his new firm's law practice books, records and bank accounts have been maintained during the preceding quarter in full compliance with Rule 1.15. This condition shall be effective as long as Beauregard is a principal and/or named partner in a firm.

(4) During the third year following the imposition of the public reprimand, Beauregard shall have caused to be filed with his Certificate of Compliance a pre-certification audit by a licensed certified public accountant with a copy to ODC. This condition shall be effective as long as Beauregard is a principal and/or named partner in a firm.

(5) Beauregard shall cooperate promptly and fully with the ODC in its efforts to monitor compliance with the conditions of the public reprimand, including, but not limited to, the following:

(a) Beauregard will fully cooperate with the performance of any audit of his new firm's law practice books and records by an auditor for the Lawyers' Fund for Client Protection; and

(b) Beauregard shall cooperate with the ODC's investigation of any allegations of unprofessional conduct which may come to the attention of the ODC. Upon request of the ODC, Beauregard shall provide authorization for release of information and documentation to verify compliance with the terms of his probation.

(6) If the ODC concludes, after giving Beauregard an opportunity to respond, that he has violated the conditions of the public reprimand, the ODC may file a petition directly with the Court to issue a Rule to Show Cause as to why additional sanctions should not be imposed for the additional violations, the violations of the conditions of the public reprimand, or both.

(7) Pursuant to Procedural Rule 27, Beauregard shall pay the ODC's costs in this disciplinary matter promptly upon the presentation of a statement of costs by the ODC. Beauregard shall also pay the costs of the audits of the Georgetown office performed by Mr. McCullough, promptly upon the presentation of a statement of such costs.

(8) Beauregard shall file with the ODC a report by Richard Herrmann, Esquire regarding the status of his new firm's conflicts screening mechanism, including a description of that system and whether or not it is, in fact, used.

Dated:



JAMES H. GEER

Dated:

ELIZABETH M. MCGEEVER

Dated:

DAVID J. FERRY, JR.

Dated:

JAMES H. GEER

Dated:

8/21/05

Elizabeth M. McGeever

ELIZABETH M. MCGEEVER

Dated:

DAVID J. FERRY, JR.

Dated:

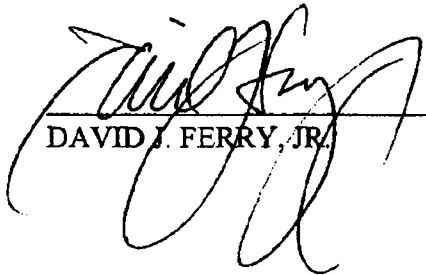
JAMES H. GEER

Dated:

ELIZABETH M. MCGEEVER

Dated:

8/22/05



DAVID J. FERRY, JR.

CERTIFICATE OF SERVICE

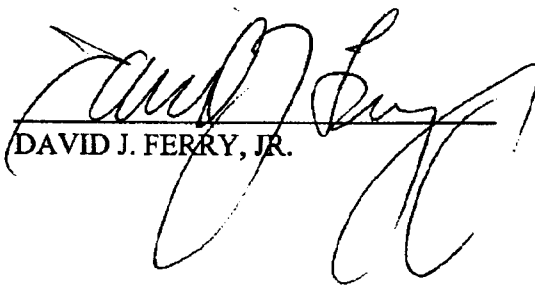
I hereby certify that a copy of the within Report of the Board on Professional Responsibility was served in the manner indicated on August 22 2005 upon the following:

BY HAND

Patricia Bartley Schwartz, Esquire
Mary Susan Much, Esquire
Office of Disciplinary Counsel
Carvel State Office Building, 11th Floor
820 N. French Street
Wilmington, DE 19801

BY FIRST CLASS MAIL

William Swain Lee, Esquire
701 Rehoboth Avenue
Rehoboth Beach, DE 19971



DAVID J. FERRY, JR.